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Committee on Economic, Social and Cultural Rights

Communication No. 6/2015

Views adopted by the Committee at its fifty-sixth session (21 September-9 October 2015)

Subject matter:	Supplementary social benefits established in a collective agreement
Substantive issues:	Right to the enjoyment of just and favourable conditions of work; right to social security
Procedural issues:	Submission of the communication within one year after the exhaustion of domestic remedies; Committee's competence *ratione temporis*; Committee's competence *ratione materiae*
Articles of the Covenant:	7 and 9
Articles of the Optional Protocol:	2 and 3, para. 2 (a) and (b)

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Annex

Decision of the Committee on Economic, Social and Cultural Rights under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (fifty-sixth session)

concerning

Communication No. 6/2015

Submitted by:	V.T.F and A.F.L. (represented by counsel Antonio Álvarez-Ossorio Gálvez)
Alleged victims:	The authors
State party:	Spain
Date of communication:	29 April 2015 (date sent through the postal service in the State party)

The Committee on Economic, Social and Cultural Rights, established under Economic and Social Council resolution 1985/17 of 28 May 1985,

Meeting on 24 September 2015,

Having concluded its consideration of communication No. 6/2015, submitted to the Committee under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights,

Adopts the following:

Decision on admissibility

1.1 The authors of the communication are Mr. V.T.F and Mr. A.F.L., both Spanish national of legal age. The authors claim to be victims of a violation by the State party of their rights under articles 7 and 9 of the International Covenant on Economic, Social and Cultural Rights.[1] They further claim to be victims of a violation by the State party of their rights under article 12, paragraph 1, and article 26 of the International Covenant on Civil and Political Rights. The authors are represented by counsel.

1.2 On 16 June 2015, the Working Group on Communications, acting on behalf of the Committee, decided that observations from the State party were not needed to ascertain the admissibility of the present communication. Accordingly, the present communication was not transmitted to the State party, in accordance with article 6, paragraph 1, of the Optional Protocol.

The facts as submitted by the authors

2.1 Mr. V.T.F. worked in a banking establishment ("the bank") from 19 July 1966 to 7 October 1993. At the time that his employment relationship with the bank was terminated

[1] The Optional Protocol to the Covenant entered into force for the State party on 5 May 2013.

through dismissal, he was employed as section manager. Mr. A.F.L. worked in the same bank from 1 January 1972 to 22 February 1993. When his employment relationship with the bank terminated, through voluntary departure, he was employed as branch manager.

2.2 The Eighteenth Collective Agreement for the Banking Sector was published in the Official Gazette on 26 November 1999. Chapter VI of the agreement governed supplementary benefits in the event of sickness, total, permanent or absolute disability, retirement or death of an employee and retirement pensions for bank employees. An internal fund was established under the provisions of chapter VI in order to meet the payment of such benefits.

2.3 On 15 November 2002, in accordance with Royal Decree No. 1588/1999, the bank took out policies with an insurance company in order to secure the supplementary benefits provided for under the agreement for staff members in active employment. The authors were included among the beneficiaries of the insurance policy, in accordance with the terms set out in the individual insurance certificates.

2.4 Mr. V.T.F. alleges that on 7 October 1993 he was dismissed by the bank. Mr. A.F.L. terminated his contract voluntarily on 22 February 1993. The authors subsequently requested the bank to pay the cash surrender value of the mathematical provision corresponding to their accrued pension rights.[2] The bank, however, did not accede to their request.

2.5 On 3 April 2008, the authors brought an action against the bank and the insurance company in Madrid Labour Court No. 17 ("Court No. 17") seeking a declaration of entitlement to the cash surrender value of their individual endowments in the fund at the date of termination of their employment relationship with the bank. The bank raised an objection of limitation of actions deriving from an employment contract and entitlement to the surrender, transfer or mobilization of the internal fund, on the basis of article 59 of the Workers' Statute.

2.6 On 25 May 2009, Court No. 17 upheld the objection raised by the bank and dismissed the authors' action. The Court ruled that article 59 of the Workers' Statute was applicable, under which actions deriving from an employment contract and for which no special limitation is specified are time barred within one year of termination of the contract. In addition, the Court declared inapplicable article 43 of the Social Security Act, which establishes a maximum period of five years for the exercise of the right to benefits, running from the day after the date of the occurrence of the contingency giving rise to the benefit in question, such as the retirement and/or disability of the employee or the entitlement of recipients to survivors'/orphans' pensions. The Court found that in the authors' case this period was not applicable, inasmuch as no such contingency had occurred. On 24 July 2009, the authors lodged an appeal with the Madrid High Court.

2.7 On 30 April 2010, the Madrid High Court dismissed the authors' appeal and upheld the ruling of Court No. 17. The High Court considered the authors' appeal to be defective since, instead of contesting the grounds of the decision of Court No. 17 (time-barred action), they presented arguments relating solely to the merits of the case. Subsequently, the authors filed an appeal in cassation for unification of doctrine before the Supreme Court.

2.8 On 14 December 2010, the Supreme Court rejected the authors' appeal in cassation against the ruling of the Madrid High Court.

[2] The authors claim that the accounting provision for the bank's potential pension liability towards Mr. V.T.F. and Mr. A.F.L. *arising under the Agreement* amounted to €84,557.26 and €48,067.04, respectively.

2.9 On 18 July 2011, the authors lodged an application with the European Court of Human Rights, claiming a violation of their rights under articles 6, paragraph 1, and 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) and article 1 of Protocol No. 1 to the Convention. On 12 December 2013, the Court rejected the application on the grounds that it failed to meet the admissibility criteria set forth in articles 34 and 35 of the European Convention on Human Rights.

2.10 On 11 July 2014, the authors requested the European Court of Human Rights to state the reasons why their application was declared inadmissible on 12 December 2013. The authors state that at the time of the submission of the communication to the Committee they had received no reply from the Court and that the relevant date for calculating the time period of one year established in article 3, paragraph 2 (a), of the Optional Protocol is 11 July 2014.

The complaint

3.1 The authors assert that the State party violated their rights under articles 7 and 9 of the International Covenant on Economic, Social and Cultural Rights. They further allege that the State party violated their rights under article 12, paragraph 1, and article 26 of the International Covenant on Civil and Political Rights.

3.2 The authors request the Committee to find that the articles invoked have been violated and that legal costs and compensation for damages should be awarded.

Issues and proceedings before the Committee

Consideration of admissibility

4.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 9 of its provisional rules of procedure under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (E/C.12/49/3), whether the communication is admissible or inadmissible under the Optional Protocol.

4.2 The Committee is competent, *ratione materiae*, to consider allegations of a violation of any of the economic, social and cultural rights set forth in the International Covenant on Economic, Social and Cultural Rights. The Committee therefore declares the authors' claims under article 12, paragraph 1, and article 26 of the International Covenant on Civil and Political Rights inadmissible under article 3, paragraph 2 (d), of the Optional Protocol.

4.3 The Committee recalls that the Optional Protocol entered into force for the State party on 5 May 2013 and that, in accordance with article 3, paragraph 2 (b), of the Optional Protocol, the Committee must declare a communication inadmissible when the facts that are the subject of the communication occurred prior to the entry into force of the Optional Protocol for the State party concerned unless those facts continued after that date. In the present case, the Committee observes that the actions that are the subject of the communication, including all the relevant judicial decisions of the Spanish authorities, occurred prior to 5 May 2013, the date of entry into force of the Optional Protocol for Spain. No grounds can be derived from the information contained in the communication for concluding that any new events have occurred subsequent to the entry into force of the Optional Protocol that could, in themselves, be considered to constitute a violation of the Covenant. Consequently, the Committee considers that it is precluded, *ratione temporis*, from examining the present communication and that the communication is inadmissible under article 3, paragraph 2 (b), of the Optional Protocol.

5. The Committee therefore decides:

(a) That the communication is inadmissible under article 3, paragraph 2 (b) and (d), of the Optional Protocol; and

(b) That this decision should be transmitted to the State party and to the authors.